THE HON'BLE Mr. JUSTICE N.V. RAMANA

Writ Petition No.34828 of 1998

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Dated: February 2, 2006

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Between:

B. Sreenivas Gupta, S/o. B. Kumara Swamy,

aged 28 years, Occ: Conductor,

R/o. Prijinapally, Nagarkurnool,

Mahabubnagar District.

… Petitioner

And

The APSRTC rep. By its Managing Director,

Tarnaka, Hyderabad, and three others.

… Respondents

Order:

Petitioner seeks Mandamus declaring the action of the respondents in not appointing him afresh as Grade-II Conductor, thus depriving him of his seniority and back wages, and to set aside the orders dated 05-03-1997 and 19-07-1997, as arbitrary and illegal.

2. Petitioner, a Conductor in the respondent-Corporation states that he was removed from service by Respondent No.3, by order dated
29-03-1997. Thereafter, petitioner is said to have filed an appeal before Respondent No.2, who set aside the order of removal, and appointed the petitioner as Grade-II Conductor afresh, without continuity of service with full back wages. While things stood thus, petitioner was issued with a Charge Memo dated 15-10-1995, alleging certain irregularities, to which, petitioner submitted his explanation. Thereafter, a Charge Sheet dated 18-10-1995 was issued to the petitioner and after enquiry, the enquiry officer submitted a report holding the petitioner guilty of all the three charges. It is stated that a show cause notice dated 11-03-1997 was issued to the petitioner. Petitioner states that he submitted explanation to the same, but without considering it, orders of removal dated 29-03-1997 were passed. Challenging the same, petitioner preferred an appeal before the Divisional Manager, Sanathnagar Division, which was rejected by order dated 24-05-1997. Aggrieved thereby, petitioner preferred revision before Respondent No.2, who by order dated 19-07-1997, set aside the punishment of removal from service and ordered that the petitioner shall be appointed as Conductor Grade-II afresh, with the following terms and conditions.

1. Petitioner shall be appointed as Conductor Gr.II duly fixing his pay at Rs.1645/- per month in the scale of Rs.1645-55-2140-65-2595-70-3155/-.

2. His previous service in the Corporation shall not be counted for any purposes viz., PF, Gratuity, levae, increment, promotion etc., and his seniority shall be reckoned from the date of his reporting for duty at the unit posted on appointment as Conductor, Grade.II afresh.

3. He should pay fresh security deposit.

4. His appointment as Conductor Gr.II afresh shall be subject to medical fitness for A-2 category in the medical examination and production of valid conductor licence.

5. He should pay back all dues viz., festival advance, short remittance of bus cash and other amounts if any pending due prior to the date of his removal from service and submit no due certificate from Depot Manager, BHEL Depot and Accounts Officer (Hyderabad City Region) at Rethifile, Secunderabad.

6. If the above terms and conditions mentioned at Sl.Nos.1 to 5 are acceptable to him, he may give in writing that the above terms are acceptable to him."

3. The only contention advanced by the learned counsel for the petitioner is that the enquiry officer without giving proper opportunity to him erroneously came to a conclusion that the charges were proved beyond doubt. He further contends that the

punishment imposed is disproportionate to the charges leveled against him

4. On the other hand, learned Standing Counsel appearing for the respondents contends that the petitioner has to approach the Labour Court, and this Court under Article 226 of the Constitution of India, cannot re-appreciate the evidence. He further contends that as per the judgment of the Supreme Court in **Regional Manager, Rajasthan SRTC v. Sohan Lal**, this Court cannot interfere with the punishment imposed by the disciplinary authority unless it shown that the punishment imposed is disproportionate to the proved misconduct.

5. The charges leveled against the petitioner are (i) for having failed to observe the rule 'issue and start' (ii) for having collected a concessional fare of Rs.1.00 each instead Rs.1.75 ps. Each from (3) three lady passengers who have found alighting at Tellapur Stage No.4, having boarded at Saibaba Temple which constitutes serious misconduct in terms of Reg.28 (vi-a) of APSRTC Employees (Conduct) Regulations, 1963. (iii) for having failed to close the ticket that Nos. of all denominations against Stage Nos. 3 and 4.

6. Learned counsel for the petitioner, except stating that the punishment imposed on the petitioner is disproportionate to the charges leveled against him and the enquiry has not been conducted properly, could not demonstrate before this Court how the punishment imposed is disproportionate. In this writ petition, though challenge has been made with regard to the manner of conducting enquiry, nothing has been stated except a mere allegation that the corporation has not followed the principles of natural justice. The only question remains to be answered is whether the punishment imposed is disproportionate to the proved misconduct. Since it is a cash and ticket irregularity, the petitioner was removed from service. The same has been upheld in the appeal and the reviewing authority, with a lenient way, ordered fresh appointment of the petitioner, with certain terms and conditions. Admittedly, petitioner accepted the said terms and conditions. Once the offence is proved, notwithstanding the amount involved – whether paltry or substantial, the offender deserves punishment. In **U.P.S.R.T.C. V. Mahendra Nath Tiwari,** the Apex Court held that *even if it be only one passenger to whom the bus conductor has not issued ticket, it amounts to clear violation of duty imposed on him and a grave charge against him who is really in position of trust as far as employer is concerned and it constitutes a grave charge sufficient to dismiss him from service and the extent of pecuniary loss caused to his employer is not the relevant criteria.* Therefore, I find no reason to interfere with the impugned order.

7. The writ petition is accordingly dismissed. No costs.

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N.V. RAMANA, J.

February 02, 2006

MRR